

[46 FR 45334](#)

September 11, 1981

Rules and Regulations

Reporter

46 FR 45334

[Federal Register](#) > [1981](#) > [September](#) > [September 11, 1981](#) > [Rules and Regulations](#) > [FEDERAL REGISTER](#)

Action: Final regulations.

Agency

FEDERAL REGISTER

Administrative Code Citation

36 CFR Part 810

Synopsis

SUMMARY: These final regulations will implement Council responsibilities under the Freedom of Information Act ([5 U.S.C. 552](#)). Heretofore, the Council has opted to follow the Department of the Interior's Freedom of Information Act regulations. These final regulations will provide the Council with its own regulations to better meet its specific needs.

Text

SUPPLEMENTARY INFORMATION: The Council was established by the National Historic Preservation Act of 1966, as amended ([16 U.S.C. 470](#)), and consists of the Secretary of the Interior, the Secretary of Housing and Urban Development, the Administrator of the General Services Administration, the Secretary of the Treasury, the Secretary of Agriculture, the Secretary of Transportation, the Architect of the Capitol, the Chairman of the National Trust for Historic Preservation, the President of the National Conference of State Historic Preservation Officers, and four members from the general public appointed by the President, four historic preservation experts appointed by the President, and a governor and a mayor. The Act generally charges the Council with advising the President and the Congress on historic preservation matters. The Council's administrative support is provided by the Department of the Interior. Heretofore, the Council has opted to follow the Department's Freedom of Information Act regulations. These final regulations will provide the Council with its own regulations to better meet its specific needs.

No comments were received on the proposed rule and no changes or additions have been made in the final regulations. The final regulations were approved by the Council at its meeting on August 25, 1981.

Pursuant to 36 CFR 805, "National Environmental Policy Act Implementation Procedures," the Council has determined that an Environmental Impact Statement is not required.

Principal Author: Katherine Raub Ridley, Attorney Advisor.

Robert R. Garvey, Jr.,

Executive Director.

Kelly Fanizzo

September 4, 1981.

Regulations

36 CFR is amended by adding Part 810 to read as follows:

PART 810 -- FREEDOM OF INFORMATION ACT REGULATIONS

Sec.

810.1 Purpose and scope.

810.2 Procedure for requesting information.

810.3 Action on requests.

810.4 Appeals.

810.5 Fees.

810.5 Exemptions.

Authority: [*Pub. L. 89-665, 80 Stat. 915 \(16 U.S.C. 470\)*](#) as amended by [*Pub. L. 91-243, Pub. L. 93-54, Pub. L. 94-422, Pub. L. 94-458, Pub. L. 96-199, Pub. L. 96-244, Pub. L. 96-515.*](#)

§ 810.1 Purpose and scope.

This subpart contains the regulations of the Advisory Council on Historic Preservation implementing the Freedom of Information Act ([*5 U.S.C. 552*](#)). Procedures for obtaining the records covered by the Act are established in these regulations. Persons seeking information or records of the Council are encouraged to consult first with the staff of the Council before filing a formal request under the Act pursuant to these regulations. The informal exchange of information is encouraged wherever possible.

§ 810.2 Procedure for requesting information.

- (a) Requests for information or records not available through informal channels shall be directed to the Administrative Officer, Advisory Council on Historic Preservation, 1522 K Street NW., Washington, D.C. 20005. All such requests should be clearly marked "FREEDOM OF INFORMATION REQUEST" in order to ensure timely processing. Requests that are not so marked will be honored, but will be deemed not to have been received by the Council, for purposes of computing the response time, until the date on which they are identified by a member of the Council staff as being a request pursuant to the Freedom of Information Act.
- (b) Requests should describe the records sought in sufficient detail to allow Council staff to locate them with a reasonable amount of effort. Thus, where possible, specific information, including dates, geographic location of cases, and parties involved, should be supplied.
- (c) A request for all records falling within a reasonably specific category shall be regarded as conforming to the statutory requirement that records be reasonably described if the records can be identified by any process that is not unreasonably burdensome or disruptive of Council operations.
- (d) If a request is denied on the ground that it does not reasonably describe the records sought, the denial shall specify the reasons why the request was denied and shall extend to the requester an opportunity to confer with Council staff in order to reformulate the request in sufficient detail to allow the records to be produced.

§ 810.3 Action on requests.

- (a) Once a requested record has been identified, the Administrative Officer shall notify the requester of a date and location where the records may be examined or of the fact that copies are available. The notification shall also advise the requester of any applicable fees under § 810.5.
- (b) A reply denying a request shall be in writing, signed by the Administrative Officer and shall include:

- (1) Reference to the specific exemption under the Act which authorizes the denial of the record, a brief explanation of how the exemption applies to the record requested, and a brief statement of why a discretionary release is not appropriate; and,
- (2) A statement that the denial may be appealed under § 810.4 within 30 days by writing to the Executive Director, Advisory Council on Historic Preservation, 1522 K Street NW., Washington, D.C. 20005.
- (c) The requirements of § 810.3(b)(1)-(2) do not apply to requests denied on the ground that they are not described with reasonable specificity and consequently cannot be identified.
- (d) Within 10 working days from receipt of a request, the Administrative Officer shall determine whether to grant or deny the request and shall promptly notify the requester of the decision. In certain unusual circumstances specified below, the time for determinations on requests may be extended up to a total of 10 additional working days. The requester shall be notified in writing of any extension and of the reason for it, as well as of the data on which a determination will be made. Unusual circumstances include:
 - (1) The need to search for and collect records from field offices or other establishments that are separate from the Washington office of the Council;
 - (2) The need to search for, collect, and examine a voluminous amount of material which is sought in a request; or,
 - (3) The need for consultation with another agency having substantial interest in the subject matter of the request.

If no determination has been made by the end of the 10-day period or the end of the last extension, the requester may deem his request denied and may exercise a right of appeal in accordance with Section 810.4.

§ 810.4 Appeals.

- (a) When a request has been denied, the requester may, within 30 days of receipt of the denial, appeal the denial to the Executive Director of the Council. Appeals to the Executive Director shall be in writing, shall be addressed to the Executive Director, Advisory Council on Historic Preservation, 1522 K Street NW., Washington, D.C. 20005, and shall be clearly marked "FREEDOM OF INFORMATION APPEAL." Requests that are not so marked will be honored, but will be deemed not to have been received by the Council, for purposes of computing the response time, until the date on which they are identified by a member of the Council staff as being an appeal pursuant to the Freedom of Information Act.
- (b) The appeal will be acted on within 20 working days of receipt. A written decision shall be issued. Where the decision upholds an initial denial of information, the decision shall include a reference to the specific exemption in the Freedom of Information Act which authorizes withholding the information, a brief explanation of how the exemption applies to the record withheld, and a brief statement of why a discretionary release is not appropriate. The decision shall also inform the requester of the right to seek judicial review in the U.S. District Court where the requester resides or has his principal place of business, or in which the agency records are situated, or in the District of Columbia.
- (c) If no decision has been issued within 20 working days, the requester is deemed to have exhausted his administrative remedies.

§ 810.5 Fees.

- (a) Fees shall be charged according to the schedules contained in paragraph (b) of this section unless it is determined that the requested information will be of primary benefit to the general public rather than to the requester. In that case, fees may be waived. Fees shall not be charged where they would amount to less than \$3.00.
- (b) The following charges shall be assessed:
 - (1) Copies of documents -- \$0.10 per page.
 - (2) Clerical searches -- \$1.00 for each one quarter hour in excess of the first quarter hour spent by clerical personnel in searching for requested records.

46 FR 45334

- (3) Professional searches -- \$2.00 for each one quarter hour in excess of the first quarter hour spent by professional or managerial personnel in determining which records are covered by a request or other tasks that cannot be performed by clerical personnel.
- (c) Where it is anticipated that fees may amount to more than \$25.00, the requester shall be advised of the anticipated amount of the fee and his consent obtained before the request is processed. The time limits for processing the request under § 810.3 shall not begin to run until the requester's written agreement to pay the fees has been received. In the discretion of the Administrative Officer, advance payment of fees may be required before requested records are made available.
- (d) Payment should be made by check or money order payable to the Advisory Council on Historic Preservation.

§ 810.6 Exemptions.

- (a) The Freedom of Information Act exempts from disclosure nine categories of records which are described in 5 U.S.C. 552(b).
- (b) When a request encompasses records which would be of concern to or which have been created primarily by another Federal agency, the record will be made available by the Council only if the document was created primarily to meet the requirements of the Council's regulations implementing Section 106 of the National Historic Preservation Act or other provisions of law administered primarily by the Council. If the record consists primarily of materials submitted by State or local governments, private individuals, organizations, or corporations, to another Federal agency in fulfillment of requirements for receiving assistance, permits, licenses, or approvals from the agency, the Council may refer the request to that agency. The requester shall be notified in writing of the referral.

[FR Doc. 81-26582 Filed 9-10-81; 8:45 am]

BILLING CODE 4310-10-M

Dates

EFFECTIVE DATE: September 11, 1981.

Contacts

FOR FURTHER INFORMATION CONTACT:

John M. Fowler, General Counsel, Advisory Council on Historic Preservation, 1522 K Street NW., Washington, D.C. 20005; 202-254-3967.

FEDERAL REGISTER

End of Document